

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ANDRES CONSTRUCTION SERVICES,
LLC

Plaintiff,

v.

AMERISURE INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO.

**DEFENDANT AMERISURE MUTUAL INSURANCE COMPANY'S (IMPROPERLY
NAMED AS AMERISURE INSURANCE COMPANY) NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMERISURE MUTUAL INSURANCE COMPANY (IMPROPERLY NAMED AS AMERISURE INSURANCE COMPANY) (hereinafter, "Amerisure"), Defendant, and files this, its *Notice of Removal*, and shows the court the following:

I.

INTRODUCTION

1. Plaintiff is ANDRES CONSTRUCTION SERVICES, LLC (hereinafter, "Andres Construction") and Defendant is AMERISURE MUTUAL INSURANCE COMPANY (IMPROPERLY NAMED AS AMERISURE INSURANCE COMPANY).

2. On **June 24, 2015**, Plaintiff sued Defendant in the 68th Judicial District Court of Dallas County, Texas, in Cause No. DC-15-07166 styled *Andres Construction Services, LLC*,

Plaintiff v. Amerisure Insurance Company, Defendant, which case is still pending in said court. Plaintiff demanded a trial by jury in its Original Petition.

3. Defendant *Amerisure* was served with such suit on **July 15, 2015**. Defendant Amerisure files this, its *Notice of Removal*, within the 30-day time period required by 28 U.S.C. §1446(b).

II.

BASIS FOR REMOVAL

4. Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. §1332(a). Plaintiff ANDRES CONSTRUCTION is a Texas limited liability company, organized under the laws of Texas, doing business in Dallas County, Texas. Defendant AMERISURE MUTUAL INSURANCE COMPANY (IMPROPERLY NAMED AS AMERISURE INSURANCE COMPANY) is an insurance company whose principal address is 26777 Halstead Road, Farmington Hills, Michigan 48333-2060, and organized and existing under the laws of the state of Michigan with its principal place of business in Farmington Hills, Michigan and whose principal address is 26777 Halstead Road, Farmington Hills, Michigan 48331-3586. For the purposes of clarity, AMERISURE INSURANCE COMPANY and AMERISURE MUTUAL INSURANCE COMPANY have the same principal address in Michigan and were organized and exist under the laws of the state of Michigan.

5. The amount in controversy clearly exceeds \$75,000.00, excluding interest and costs, as Plaintiff ANDRES CONSTRUCTION has specifically pled for damages over \$200,000.00 but not more than \$1,000,000.00 in its Original Petition filed with the 68th Judicial Court in Dallas County, Texas. In addition, Andres Construction is seeking for Amerisure to pay its past incurred defense costs and indemnify it from a judgment in the amount of \$1,336,908.67

relating to an underlying lawsuit styled *Canal Side Lofts Ltd., Plaintiff, v. Andres Construction Services, LLC, et. al., Defendants*; Cause No. DC-11-04649; In the 44th Judicial District Court of Dallas County, Texas (hereinafter, the "Underlying Lawsuit"). Plaintiff in the Underlying Lawsuit brought a breach of contract cause of action and sought damages against Andres Construction, for which Plaintiff prevailed. The Plaintiff in the Underlying Lawsuit alleged that Andres Construction breached the contract by failing to remedy blistering, delamination and other defects and deficiencies in the Plaintiff's exterior stucco wall system, and by failing and/or refusing to enforce the workmanship and product warranties Andres Construction was required to obtain from its subcontractors and product vendor. *See* Plaintiff's Original Petition in the Underlying Lawsuit, attached herein as Exhibit "A." Finally, Plaintiff Andres Construction seeks attorneys' fees pursuant to Chapter 38 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, §38.001, for the prosecution of its breach of contract claim, which sum alone may exceed \$75,000.00 excluding interest and costs. Therefore, and taking this into consideration, the amount in controversy clearly exceeds \$75,000.00.

6. All pleadings, process, orders and other filings in the state court action will be attached to this notice as required by 28 U.S.C. §1446(a). In addition, Defendant files herewith an index of all documents filed in state court, a copy of the docket sheet in the state court action, all documents filed in the state court action, and a signed certificate of interested persons in accordance with Local Rules 81.1 and 3.1(c). Please see Exhibit "B," attached herein.

7. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court action where the action has been pending is located in this district.

8. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

III.

PRAYER

WHEREFORE, Defendant **AMERISURE MUTUAL INSURANCE COMPANY (IMPROPERLY NAMED AS AMERISURE INSURANCE COMPANY)** asks the Court to remove the action *ANDRES CONSTRUCTION SERVICES, LLC., Plaintiff, v. AMERISURE INSURANCE COMPANY, Defendant*; Cause No. DC-15-07166 in the 68th Judicial District Court of Dallas County, Texas, to this federal court.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
AMERISURE MUTUAL INSURANCE
COMPANY (IMPROPERLY NAMED AS
AMERISURE INSURANCE COMPANY)**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded to counsel, via facsimile, on this the 31st day of July, 2015, as follows:

John W. Slates
Matthew M. Waterman
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Via Facsimile: (469) 317-1100

s/ R. Brent Cooper

R. Brent Cooper